

APR 17 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

BO LIU,

Plaintiff - Appellant,

v.

MICHAEL S. CARONA; et al.,

Defendants - Appellees.

No. 05-55799

D.C. No. CV-03-00365-AHM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
A. Howard Matz, District Judge, Presiding

Submitted April 5, 2006**

Before: HAWKINS, McKEOWN, and PAEZ, Circuit Judges.

Bo Liu appeals pro se from the district court's order dismissing with prejudice his 42 U.S.C. § 1983 action alleging constitutional rights violations by law enforcement officials. We have jurisdiction under 28 U.S.C. § 1291. We

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

review de novo the district court's dismissal for failure to state a claim, *Nelson v. Heiss*, 271 F.3d 891, 893 (9th Cir. 2001), and we affirm.

We address only the district court's dismissal of Liu's claims against Smith because Liu explicitly waived his claims against the remaining defendants in his opening brief. The district court properly dismissed the claims against Smith because she is immune from section 1983 liability for actions taken within her official capacity as a sheriff. *See McMillan v. Monroe County*, 520 U.S. 781, 795 (1997) (holding state law governs whether a sheriff is considered a state or county official for the purposes of section 1983 liability); *see also Venegas v. County of Los Angeles*, 32 Cal.4th 820, 839-40 (2004) ("California sheriffs act as state officers while performing state law enforcement duties"); *Doe v. Lawrence Livermore Nat'l Lab.*, 131 F.3d 836, 839 (9th Cir. 1997) (holding Eleventh Amendment bars damages actions against state officials in their official capacity).

Liu's remaining contentions are without merit.

AFFIRMED.